

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BUNGIE, INC., a Delaware corporation,

Plaintiff

v.

AIMJUNKIES.COM, a business of unknown
classification; PHOENIX DIGITAL GROUP
LLC, an Arizona limited liability company;
JEFFREY CONWAY, an individual; DAVID
SCHAEFER, an individual; JORDAN GREEN,
an individual; and JAMES MAY, an individual,

Defendants.

Cause No. 2:21-cv-0811 TSZ

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION TO
AMEND JURY TRIAL DATE
AND RELATED DEADLINES**

**Note on Motion Calendar:
September 15, 2023**

In opposition to Plaintiff's Motion to Amend Jury Trial Date and Related Deadlines, Defendants state as follows:

1. This case has been pending for over two years. If tried as scheduled in early December, 2023, it will have been pending over two-and-one-half-years. To put this in perspective, the United States' entire involvement in World War I was more than one year shorter. It is time for this matter to come to a close.

2. Bungie's claim that no prejudice will result from delaying the trial yet again is disingenuous. True, for Bungie, maintaining the status quo is no problem. For Defendants, it is devastating. The practical effect of Bungie's lawsuit, combined with its self-admitted campaign "to put cheaters on notice that Bungie will not tolerate cheating in Destiny2" has been to put Phoenix Digital out of business and destroy the livelihoods of four men who have broken no laws. Defendants' only hope is to present the facts to a jury of their peers and put Bungie's alleged, but increasingly ambiguous and unstated "proof" to the test. Why, after more than two

1 years of litigation, Bungie would *not* want its day in Court is facially perplexing but not difficult
2 to understand, given the increasingly apparent fact that Bungie not only lacks evidence to show
3 any “copying” on the part of Defendants but has even admitted it never conducted any sort of
4 actual analysis of the “cheat software” it claims was copied from Destiny 2.

5 3. Bungie’s purported grounds for further delay are preposterous. To date, Bungie
6 has taken at least two depositions (at apparently \$35,000 or more per deposition) of each of the
7 four individual Defendants, and has deposed Defendant David Schaefer on at least four separate
8 occasions. Bungie has already deposed Defendants’ prior expert witness who Bungie
9 successfully intimidated into withdrawing from the case, and is scheduled to take the deposition
10 of Defendants’ substitute expert later this month. How Bungie and its high-priced counsel *could*
11 *not* be prepared for trial at this late date despite what is now certain to be millions in incurred
12 legal fees is hard to believe and calls into question just what services these name-brand firms
13 provide in return for such fees. If this simple copyright and trademark case, involving a mere
14 \$60,000 in overall gross sales, is as one-sided and as open and shut as Bungie claims, how
15 difficult can it be to demonstrate such to a jury? How can it take more than two-and-one-half
16 years to prepare what should (if Bungie is telling the truth) be a slam-dunk case? Again, major
17 wars have been fought in less time.

18 4. Bungie’s lack of basic candor with this Court is further evidenced by that fact
19 that, although it claims there is insufficient time (after more than two years) to prepare for trial,
20 it nevertheless has the time and resources to file separate actions in state courts to discover
21 assets and attempt to enforce its arbitration award against the individual defendants.
22 Contemporaneous with its request that this Court postpone the trial, Bungie has had no difficulty
23 in filing separate actions in multiple state courts, and serving discovery requests, in its effort to
24 enforce the arbitration award it obtained earlier. Again, Bungie is not playing it straight and
25 engages in situational ethics in electing which arguments to provide to which tribunal.

26 5. As Defendants see it, this Court has been quite clear that it is not inclined to
27 delay this case any further, and Defendants have been as diligent as possible in meeting this
28 Court’s various deadlines and doing their best to be prepared for trial on December 4, 2023.
Why Bungie apparently believes this Court was only joking when issuing it various orders and
schedules is unexplained. This case, which has taken a severe toll on the individual defendants
needs to be brought to a resolution, either by way of settlement or disposition on the merits.

1 Nothing brings about settlement better than an impending firm trial date. And if that is not in
2 the cards, placing the evidence before a jury is equally as good. Bungie's ill-considered and
3 unsupported request for a further delay serves the interests of no one other than Bungie itself.
4 Neither Defendants, this Court nor the public interest are served by further delaying the day of
5 reckoning and determining once and for all whether Bungie's purported case is based on actual
6 facts or smoke and mirrors.

7 For all the foregoing reasons, Bungie's request to postpone the trial should be denied.

8 Dated September 13, 2023.

/s/ Philip P. Mann

9 Philip P. Mann, WSBA No: 28860

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